

Agenda

Item #7



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: April 15, 2011

Re: One More Proposed Statute Change for the 2011 Legislative Session

Thank you for your consideration of statute changes proposed by the Commission staff for the 2011 session. The staff expects the Commission's campaign finance bill to be printed shortly and to be scheduled for a public hearing in early May.

The Commission staff wishes to propose for your consideration one more change to the bill, concerning the limits on candidates' expenditures of Maine Clean Election Act (MCEA) funds. If you approve of the change, I would ask the Joint Standing Committee on Veterans and Legal Affairs to include the change in a committee amendment to the Commission's bill. The proposed change is on the reverse side of this page.

Personal expenses. Candidates overwhelmingly spend MCEA funds on traditional campaign expenses such as lawn signs, printed materials, and advertisements. Occasionally, we receive questions from candidates about proposed expenditures that could be construed by the public as personal. In 2010, for example, the Commission staff was asked by candidates whether they could use MCEA funds to purchase an office chair, flowers for a campaign office, improvements to a vehicle, and a bicycle for campaign travel.

The staff believes that the best way to promote long-term support for the MCEA program is to discourage any candidate's use of MCEA funds for personal benefit. Since 2000, the Commission's guidelines have prohibited candidates from spending MCEA funds for personal expenses such as clothing or rent – even when the goods or services purchased arguably would be used by the candidate to promote his or her campaign.

Your consideration of air travel at the March 2011 meeting underscored that the only standard in statute for permissible uses of MCEA funds is that expenditures must be "campaign-related." (21-A M.R.S.A. § 1125(6)) The Commission staff proposes an explicit prohibition in statute against the use of MCEA funds for the candidate's personal benefit or gain, so that the Commission is fully authorized to disallow candidates' expenditures of MCEA funds for personal expenses.

Paid communications that primarily promote or oppose a ballot question. At your May 27, 2010 meeting, the Commission declined to give an advisory opinion to a number of candidates who

inquired whether they could use MCEA funds for a proposed radio advertisement in support of the people's veto referendum of an expansion of the sales tax. Some Commissioners expressed that they did not want to limit candidates' opportunities to discuss issues. Nevertheless, some Commissioners viewed the proposed radio advertisement as primarily promoting the referendum, rather than the election of the candidates. A similar issue arose in 2006, when a State Senate candidate in Portland used MCEA funds for newspaper advertisements explicitly urging a "yes" vote in favor of the Taxpayer Bill of Rights citizen initiative.

Would you have any interest in using the Commission's 2011 bill as a vehicle to clarify the Legislature's preference on this issue? Under our proposal, candidates could not use MCEA funds for a paid communication that primarily supports or opposes a referendum or citizen initiative. Our thought is that candidates could continue to mention ballot questions in paid communications as a means of defining or promoting themselves as candidates. We recognize that this could create some line-drawing questions, but it might provide candidates and the Commission with more guidance from the Legislature than currently exists. Another alternative would be for you to address this issue in the 2012 expenditure guidelines, but you may prefer to have the Legislature make the policy decision, rather than the Commission.

Proposed Change

21-A MRSA 1125(6). Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. Fund revenues may not be used for the personal benefit or gain of the candidate or for a paid communication that primarily supports or opposes a referendum or citizen initiative. ~~A television advertisement purchased with these revenues must be closed captioned when closed captioning is available from the broadcasting station who will broadcast the advertisement.~~

The commission shall publish guidelines outlining permissible campaign-related expenditures.

Thank you for your consideration of this proposal.



2010 EXPENDITURE GUIDELINES

For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

PERMISSIBLE CAMPAIGN-RELATED EXPENDITURES

Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:

- Printing and mailing costs;
- Political advertising expenses;
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
- Office supplies;
- Campaign events (e.g., food, rent of tent or hall, etc.);
- Campaign staff expenses;
- Campaign travel expenses, such as fuel and tolls; and
- An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign.

PROHIBITED EXPENDITURES

Candidates may not use MCEA funds for personal expenses. This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household food items and supplies;
- Vehicle and transportation expenses unrelated to the campaign;
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
- Clothing, including attire for political functions such as business suits or shoes.

Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
- pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
- make a thank-you gift (including a gift card) to a volunteer or supporter;
- compensate the candidate for services provided by the candidate;
- make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
- promote political or social positions or causes other than the candidate's campaign;
- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
- assist the candidate in a recount of an election.

GUIDELINES ON SELECTED ISSUES

Electronics and Other Personal Property. Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the final report for the campaign, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.

Food. Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse. Gubernatorial candidates may use MCEA funds to purchase meals for the candidate and/or the candidate's spouse if associated with travel for campaign purposes.

Car Travel. MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2010, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.44. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.

Lodging. Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.

Post-Election Notes and Parties. Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates, \$750 for State Senate candidates, and \$2,500 for gubernatorial candidates. Candidates may also use personal funds for these purposes.

Campaign Training. Candidates may use MCEA funds for tuition or registration costs to receive training on campaigning or policy issues.

Salary and Compensation. Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

REQUIRED RECORD-KEEPING

The MCEA requires participating campaigns to keep bank or other account statements for the campaign account covering the duration of the campaign. For every expenditure of \$50 or more, the campaign must also keep:

- (1) an invoice from the vendor stating the particular goods or services purchased, and
- (2) a cancelled check, cash receipt, or other acceptable proof that the vendor received payment.

For any services provided to the campaign by a vendor for which the campaign paid \$500 or more for the election cycle, the campaign must keep an invoice, timesheet, or other document specifying in detail the services the vendor provided, the amount paid and the basis for the compensation paid by the campaign. Please select a treasurer who will be responsible about keeping these records.

AUDITING AND COMPLIANCE

In 2010, the Commission staff will audit all gubernatorial candidates receiving MCEA funding and at least 20% of MCEA legislative candidates. The staff will review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.